ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Amendment of the Commission's Rules to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	IB Docket No. 96-111

COMMENTS OF AIRTOUCH

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Dated: July 15, 1996

SUMMARY

As explained in these comments, AirTouch believes that with respect to Big LEOs, the proposed procedural framework for evaluating requests to use foreign-licensed space stations would be inappropriate and premature Big LEOs are inherently global systems, because the satellite constellation will overfly all of the planet. In addition, the Big LEOs are multinational organizations, with investors and local affiliates from around the world. Thus, the Commission's ECO-Sat test, which is based on a reciprocal "home country" and route-by-route analysis, is ill-suited to the Big LEO satellite systems. While a "critical mass" analysis is somewhat better suited to Big LEOs, the "critical mass" proposal does not add any certainty and is still grounded on a reciprocity construct.

AirTouch also believes that it would be premature for the Commission to adopt the regulatory approach suggested in the *Notice* with respect to Big LEOs in light of ongoing international activities. AirTouch urges the Commission to defer including Big LEOs in any new regulatory framework adopted in this proceeding at least until after the completion of the ongoing multilateral trade talks looking towards adoption of, *inter alia*, a telecommunications sectoral agreement that may include a "critical mass" element governing satellite communications.

AirTouch does not believe that it is necessary or appropriate to apply the proposed regulatory framework to Big LEO satellite systems. The Commission could simply continue to apply an *ad hoc* review of any applications to use foreign-licensed Big LEO systems.

Indeed, it may even be counterproductive to address Big LEO satellite systems in this proceeding. Given the nascent stage of system development and policy coordination

for nongeostationary mobile satellite projects, adoption of a market-by-market analysis or "critical mass" approach is unlikely to yield useful comparative regulatory data, and could create a negative backlash if the United States was perceived as closing its markets to foreign-licensed Big LEOs. U.S.-licensed satellite systems require authority in foreign countries, most of which have no comparable systems seeking access. The risk is high that foreign governments could use a market access test to delay rather than expedite licensing in order to buy time to develop a system of their own Both the U.S. mobile satellite industry, and more importantly, consumers worldwide, would be harmed by such an outcome.

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COMMENTS OF AIRTOUCH

I. Introduction

AirTouch Communications ("AirTouch") hereby comments on the Notice of Proposed Rulemaking addressing the standards under which the Commission will allow the use of satellites licensed by foreign countries to provide service in the United States.[1/] AirTouch is one of the world's leading providers of mobile services through cellular and other terrestrial systems. In addition, AirTouch is a limited partner in GLOBALSTAR, L.P., the entity formed to obtain investment in and coordinate international service for the GLOBALSTAR LEO mobile satellite system to be operated by Loral/QUALCOMM Partnership, L.P.

[1/] Amendment of the Commission's Rules to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, FCC 96-210, released May 14, 1996 (hereafter cited as "*Notice*").

AirTouch intends to provide LEO mobile satellite services through GLOBALSTAR in several countries around the world.

As explained herein, AirTouch believes that with respect to Big LEOs,[2/] the proposed procedural framework for evaluating requests to use foreign-licensed space stations would be inappropriate and premature. Indeed, application of the proposed rules to Big LEOs likely would be counterproductive to the interests of U.S. consumers and U.S.-licensed service providers. AirTouch therefore urges the Commission not to apply the proposed procedural framework to Big LEOs at this time, but instead to address any foreign-licensed Big LEO applications on an *ad hoc* basis pending the resolution of certain ongoing multilateral activities.

Given the nascent stage of system development and policy coordination for nongeostationary mobile satellite projects, adoption of a market-by-market analysis or "critical mass" approach is unlikely to yield useful comparative regulatory data. U.S.-licensed satellite systems require authority in foreign countries, most of which have no comparable systems seeking access. The risk is high that foreign governments could use a market access test to delay rather than expedite licensing in order to buy time to develop a system of their own. Both the U.S. mobile satellite industry, and more importantly, consumers worldwide, would be harmed by such an outcome.

In light of the unique characteristics of Big LEO satellite systems, AirTouch does not believe that the bilateral/reciprocal framework proposed in the *Notice* is well-suited to these

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[2/] The Commission and the International Telecommunications Union ("ITU") distinguish between the low-Earth orbit ("LEO") satellite services that will operate below 1 GHz and do not provide voice service ("Little LEOs"), and the LEO satellite services that will be operating above 1 GHz and will provide voice services ("Big LEOs").

inherently global systems. AirTouch therefore believes that efforts would be better spent promoting the need for mutual recognition of systems licensed in accordance with ITU requirements, without reference to the "home country" sponsoring a particular system.

II. The Proposed Procedural Framework Is Not Well-Suited to Big LEO Satellite Systems

The *Notice* proposes a procedural framework for evaluating applications to use foreign-licensed satellite systems that is based fundamentally on a bilateral/reciprocal approach to access to the U.S. market. Such an approach does not readily accommodate the unique aspects of Big LEO systems. The *Notice* posits an "ECO-Sat" test, under which a foreign-licensed satellite system would be granted access to the U.S. market if a U.S.-licensed satellite system was provided equivalent access to the "home market" of that foreign-licensed satellite.[3/] While there is some discussion of applying a broader, multilateral analysis under some circumstances -- the "critical mass" test -- even this broader framework is derived from the belief that the public interest would best be served if access to the United States satellite services market was conditioned on reciprocal rights of the U.S.-licensed satellites to enter the foreign satellite's market(s).[4/]

[3/] *Notice* at ¶ 18.

[4/] E.g., *Notice* at ¶ 31. Under the "critical mass" analysis, the Commission would permit entry by a foreign-licensed satellite system if a sufficient number of the relevant countries were open to U.S.-licensed satellite systems, even if every one of the relevant countries did not grant access to U.S.-licensed satellite systems.

The *Notice* proposes to apply the new procedures and ECO-Sat test to broadcast satellite services, fixed satellite services and mobile satellite services.[5/] There are, however, significant differences between these different satellite services, and distinctions among the satellite systems within these categories, that make it inappropriate to attempt to use the same framework and analysis for all the different satellite services. The Commission's approach does not take full account of these significant differences.

Commercial low-Earth orbit satellite systems are a relatively new phenomenon, taking advantage of advances in satellite and launch vehicle technologies that make such systems practical. The operation of the satellites much closer to the Earth's surface than geostationary satellites allows users to communicate with the satellites via small, low-cost hand-held transceivers. Operation of the satellites in low-Earth orbit requires a constellation of satellites to provide service availability because of the movement of the satellites relative to the surface of the Earth. One major benefit of this characteristic is that once the satellite constellation is launched to provide service in the United States, those same satellites will be able to provide service throughout the world with only a small incremental investment in gateway earth stations.

As a result of this fundamental system design, LEO satellite systems are inherently global in nature, and thus ill-suited to an analysis that focuses on a "home market" or on a "route-by-route" analysis. Such a "bilateral" analysis would make no sense when applied to the global Big LEO systems. Indeed, given the need for a worldwide market in order to make these global systems viable, the concept of a single "home market" with the strongest financial interest is largely irrelevant. Moreover, because service can be added in a country

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[5/] *Notice* at ¶ 19.

through the deployment of a gateway earth station that will control operations in that country, the Big LEOs, in effect, may have hundreds of "home markets."

In addition, in light of the global nature of the systems and the large cost of constructing and launching a full constellation of satellites, investment and/or partners to provide service in different countries are likely to come from many different nations. As an example, in the case of GLOBALSTAR there already are 12 investors and numerous local operators from many different countries.[6/] The other U.S.-licensed Big LEO systems similarly have been attracting capital from multiple global sources.

There also are significant differences among the Big LEO systems. GLOBALSTAR will interconnect its gateways with the public switched network ("PSN") and/or wireless terrestrial networks in each country, and use those terrestrial networks to complete the link between a wireline or wireless caller and the GLOBALSTAR customer. Thus, GLOBALSTAR will not be "bypassing" the PSN or terrestrial wireless network when completing calls. In contrast, some other Big LEO systems will be using intersatellite links for the completion of their calls, and thus will "bypass" at least a portion of the PSN.

To some extent, the *Notice* recognizes that mobile satellite systems incorporate some characteristics that differentiate them from other satellite services.[7/] While some FSS and DBS will be national or sometimes regional, MSS will typically be regional in nature, and Big LEOs will inevitably be global. Thus, for Big LEOs it will not be the case that the

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[6/] To date, GLOBALSTAR has received authority to operate in some 92 countries.

[7/] Cf., *Notice* at ¶ 46 (questioning whether MSS can be regulated under the same legal framework as other satellite services).

"home country" can be readily identified.[8/] Nor, in light of the global investment in Big LEOs, is it necessarily the case that the "home country" will have the strongest financial interest or level of investment.[9/] Rather, Big LEOs are more like the intergovernmental organizations ("IGOs"), where the investors and "home countries" are likely to be scattered around the world. The *Notice* recognizes the special characteristics of such global multinational satellite systems.[10/]

In addition, Big LEOs present difficult, and in many ways unique, technical problems. Coordination will be troublesome because of the global nature of the satellite systems and the need to coordinate both service links and feeder links on a worldwide basis. Indeed, the ITU needed to develop new procedures (Resolution 46) for coordinating LEO satellite systems because of these problems. The Commission additionally recognizes that Big LEO satellite systems may combine terrestrial and satellite links, thereby raising unique monitoring and jurisdictional issues.[11/] It is these types of technical issues that the *Notice* indicates may warrant special treatment under the "public interest" analysis.[12/] The *Notice* thus recognizes that in this way as well the Big LEOs do not fit neatly within the regulatory framework proposed for other satellite services.

[8/] Cf., *Notice* at n. 25 (with the exception of Intelsat/Inmarsat, there is no difficulty in determining which country should be treated as the "home country" of a satellite operator). *Notice* at n. 32 (intergovernmental organizations are the only exception to "home country" being defined by coordinating administration).

[9/] Cf., *Notice* at ¶ 24 (home market will have strongest financial interest and represent most of investment).

[10/] E.g., *Notice* at ¶'s 23, 30, 64.

[11/] *Notice* at ¶ 45.

[12/] *Notice* at ¶'s 48-51.

To address the situation where there is not a single "home country," and where a route-by-route analysis would be impractical, the *Notice* suggests that the Commission might consider as an alternative a "critical mass" analysis.[13/] As the Commission recognizes, such an approach "raises difficult questions about exactly which countries are relevant and how 'critical mass' can be defined to an acceptable level of regulatory certainty."[14/] While AirTouch believes that a "critical mass" analysis would be better suited to Big LEOs than the bilateral/reciprocity model posited by the *Notice*, AirTouch agrees with the *Notice* insofar as it contends that, at this time, it would be difficult to address in a prospective, rulemaking context what would constitute the requisite "critical mass." Thus, even assuming the Commission were decide to adopt a "critical mass" test for Big LEOs, the *Notice* does not set forth a regulatory framework that would provide any certainty.[15/]

AirTouch is also concerned because the "critical mass" test is based on an even more complicated reciprocity construct. As such, there is a risk that countries will delay authorizing a Big LEO satellite system because of a perception that the U.S. market will remain closed until other nations take action, and hence that no authorizations should be granted by that country until the United States and the other relevant countries all take the steps necessary to open their markets. There is thus likely to be confusion as to "who should go first," and therefore a much greater risk of postponement of the necessary action. The resulting delay penalizes the early developers of the satellite systems, while later entrants will not have to await the conclusion of the various countries' sorting out of the confusion.

13/ *Notice* at ¶ 31.

14/ *Notice* at ¶ 31.

15/ Cf., *Notice* at ¶ 36.

In sum, as a result of their unique characteristics, Big LEO satellite systems do not fall neatly into the regulatory framework proposed in the *Notice*. AirTouch does not believe it would be good policy to "shoehorn" Big LEOs into such an ill-fitting regulatory model, and indeed could be counter to U.S. interests.[16/]

III. It Would Be Premature to Apply the Proposed Regulatory Framework to Big LEOs

AirTouch also believes that it would be premature for the Commission to adopt the regulatory approach suggested in the *Notice* with respect to Big LEOs in light of ongoing international activities that may affect the manner in which the Commission authorizes Big LEO satellite systems licensed by foreign Administrations. AirTouch therefore urges the Commission to defer including Big LEOs in any new regulatory framework adopted in this proceeding until after the completion of the ongoing multilateral trade talks looking towards adoption of, *inter alia*, a telecommunications sectoral agreement that may include a "critical mass" element governing satellite communications. These international trade proceedings have the potential to impact significantly the bilateral/reciprocity model or other frameworks posited in the *Notice*.

[16/] AirTouch is also concerned by the *Notice*'s terse suggestion of using the same "processing rules" to apply to all mutually exclusive satellite services applications under the new regulatory framework. *Notice* at ¶ 17. To the extent the Commission was suggesting that it might use auctions to award licenses in such cases, AirTouch adamantly opposes such a method of processing license applications for Big LEOs. Using auctions in the United States for Big LEOs would introduce an unacceptable level of financial uncertainty because of the unknown consequences in the United States and around the rest of the world. AirTouch believes that the uncertainty caused by auctions would likely make it impossible for Big LEO proponents to commit to even bidding for a license within the United States. It would also be administratively unworkable to attempt to obtain the requisite landing rights in a series of auctions conducted under different rules in nearly every country around the world.

The United States, of course, retains the authority to reject any multilateral offers made at the trade talks, if it determines that such a course of action best meets the needs of this country. Thus, deferring action in this proceeding in no way prejudices the United States or limits the government's sovereignty over satellite communications within or to or from the United States. At the same time, the Commission must recognize that the traditional bilateral approach to international telecommunications regulation is ill-equipped to address global satellite systems like the Big LEOs. Adoption of a new, broader approach to international satellite system regulation is not, however, an abdication of sovereignty or jurisdiction.

AirTouch believes that the Commission should not, in this rulemaking, prejudge the outcome of the ongoing multilateral proceedings. Indeed, such unilateral action by the Commission potentially could even limit the success of these multilateral efforts. On the other hand, AirTouch also believes that no prejudice would result from a delay to permit the Commission to take into account the outcome of the trade proceedings, because any such delay would be relatively short-lived. The multilateral trade talks are scheduled to conclude by mid-February of next year.[17/] To the extent any applications for use of non-U.S.-

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17/ In addition, deferring action until after the resolution of the trade proceedings has the further benefit of allowing the Commission to consider the results of the review of international satellite regulatory policies being undertaken under the auspices of the ITU this October in Geneva. One of the predicates for that ITU GMPCS Policy Forum is the perception that LEO satellite systems present new and unique regulatory challenges. There has been concern expressed by some countries that the United States did not fully consider the international ramifications of its Big LEO licensing actions. Cf., Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band, 9 FCC Rcd 5936 (1994) at ¶'s 214-224 (rejecting EC requests for delay until after other nations could address Big LEOs). The GMPCS Policy Forum therefore is intended to address, *inter alia*, whether new international satellite regulatory policies should be considered that will specifically account for the global nature of low-Earth orbit satellite systems.

licensed Big LEOs are submitted in the interim, the Commission could simply continue to treat them on an *ad hoc* basis.

One of the fundamental concepts being discussed at the ongoing multilateral trade talks is the notion that if a sufficiently large number of countries are willing to open their telecommunications markets (including the satellite services markets), then the United States would open its telecommunications markets (including satellite markets) to any WTO member country, regardless of whether that country's market was opened to U.S. companies. Thus, a "critical mass" approach similar to the one discussed in the *Notice* may be adopted and made applicable to MSS satellite systems in the context of these international trade discussions. It makes little sense for the Commission to develop a different or inconsistent "critical mass" test in this proceeding if it will have to be altered in the near future to conform to the U.S. policies developed in the multilateral trade discussions. AirTouch believes this is an independent ground for the Commission to defer addressing Big LEO satellite systems in this proceeding.

IV. The *Notice*'s Proposals Are Unnecessary and Inappropriate as Applied to Big LEO Systems

AirTouch does not believe that it is necessary or appropriate to apply the proposed regulatory framework to Big LEO satellite systems. As the Commission recognizes (at least with respect to the analogous multinational IGO satellite systems), a bilateral/reciprocal regulatory framework is ill-suited to the Big LEO satellite systems. The Big LEO satellite systems are inherently global in nature, and they will necessarily involve investment and participation from numerous countries. As a result, like the IGOs, the Commission's

analysis of the relevant factors in determining whether to authorize non-U.S.-licensed Big LEO systems will necessarily involve unique facts and circumstances, and particular consideration given to other public interest issues.[18/]

As the Commission recognizes, even if it were to adopt a critical mass standard for Big LEOs (which reflects the characteristics of Big LEOs more accurately than a bilateral "home market" or route-by-route analysis), such a test provides little predictability because the critical mass is still undefined.[19/] Under these circumstances, in essence, the *Notice* would merely serve to announce in advance that the Commission intends to address any future non-U.S. Big LEO applications on an *ad hoc* basis. Thus, including Big LEOs in the regulatory framework adopted in this proceeding would add little value, and would not provide any measure of certainty.

AirTouch also is not convinced that any new rule or procedural framework is necessary with respect to the Big LEO satellite systems. The Commission's Rules for Big LEOs already provide that system operators cannot enter into exclusionary or discriminatory arrangements in foreign countries.[20/] That general policy, along with the Commission's current requirements for seeking authorization for earth station licenses, will allow the

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[18/] *Notice* at ¶ 68 (suggesting use of an *ad hoc* approach for IGOs) and *Notice* at ¶ 73 (indicating that for the IGO "spin-offs", the other public interest factors will play an unusually important role).

[19/] *Notice* at ¶ 31.

[20/] 47 C.F.R. § 25.143(h); Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band, FCC 96-54, released February 15, 1996 at ¶'s 54-55.

Commission to review and address on an *ad hoc* basis any applications submitted to use non-U.S.-licensed Big LEO satellite systems within a Commission-defined policy framework.[21/]

AirTouch believes that any such *ad hoc* review (at least until the completion of the multilateral trade talks currently underway) would allow the Commission to address the same public interest concerns that the *Notice* is attempting to formalize.[22/] At the same time, separating out the Big LEO systems from the regulatory procedures adopted in this proceeding will avoid the potential negative backlash that could occur if the United States was perceived as closing the U.S. market to foreign-licensed Big LEO systems.

AirTouch has been engaged in discussions with numerous Administrations in an effort to expand the operating authority for the GLOBALSTAR system. AirTouch is concerned that these foreign Administrations will interpret adoption of the proposed bilateral/reciprocal model as a "market-closing" move. Such a perception could make it harder for the U.S.-licensed Big LEO satellite systems to obtain the requisite operating authority in some nations. AirTouch believes the interests of the Big LEO companies and subscribers in the United States would be disserved by actions that make it more difficult for GLOBALSTAR and other U.S.-licensed Big LEO satellite systems to obtain operating authority in foreign countries. Global operating authority will allow the Big LEO systems to take advantage of the global coverage inherent in low-Earth orbit constellations. and will also ensure U.S.

21/ The Commission additionally retains the discretion, in determining whether grant of an earth station application furthers the public interest, to address the concerns raised in the *Notice* regarding opening the U.S. market to a particular foreign-licensed satellite system. E.g., Market Entry and Regulation of Foreign-Affiliated Entities, 11 FCC Rcd 3873 (1995) at ¶'s 19 and 39.

22/ Such an interim approach would be consistent with the *Notice*'s recognition that for multinational systems like IGOs with unique characteristics and issues, an *ad hoc* review is necessary. *Notice* at ¶ 68.

subscribers the ability to communicate anywhere on Earth that they travel. The Commission recognized the extent of these benefits when it adopted its Big LEO service rules and required that global coverage be provided.[23/]

V. CONCLUSION

AirTouch believes it is unnecessary and inappropriate to address Big LEO satellite systems in this proceeding. Big LEO satellite systems do not fit neatly into the "home country" and route-by-route analysis proposed by the Commission as part of its bilateral/reciprocal model. AirTouch also believes that its goal of obtaining operating authority throughout the world would be threatened unnecessarily by precipitous action in this proceeding. AirTouch therefore urges the Commission to defer addressing Big LEO satellite systems in this rulemaking. AirTouch urges the Commission instead to continue an *ad hoc* review of any applications seeking authority to use a foreign-licensed Big LEO

23/ Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band, 9 FCC Rcd 5936 (1994) at ¶'s 3, 21-23.

satellite system, at least until the Commission can review the outcomes of the multilateral trade discussions. AirTouch believes that such a measured course of action will best serve the public interest.

Respectfully submitted,

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